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| 09/921,208 | 08/03/2001 | Charles A. Wilkins | Case9 | 5918 |

7590 06/27/2003

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EXAMINER

UPTON, CHRISTOPHER

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
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1724

DATE MAILED: 06/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

92208

Applicant(s)

Wilkins

Examiner

Upton

Group Art Unit

1724

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 5/2/03

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-33 is/are pending in the application.

Of the above claim(s) 8-14, 20, 21 and 27-30 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-3, 15-19, 22-24 and 31-33 is/are rejected.

☒ Claim(s) 4-7, 25 and 26 is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

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1. Applicant's election with traverse of Species III in Paper No. 9 is acknowledged. The traversal is on the ground(s) that the restriction requirement does not identify a figure number. This is not found persuasive because restriction may be made by other criteria than by figure number.

The requirement is still deemed proper and is therefore made FINAL.

However, in a telephone conversation with Mr. George Boller on June 24, 2003, it was agreed to recombine species I and III, as claims 6 and 7, in species I essentially recite the subject matter of claims 16 and 17, in species III.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

(f) he did not himself invent the subject matter sought to be patented.

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-3, 22-24 and 31-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 13 of U.S. Patent No. 6,231,764. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims obviously comprise the subject matter recited in the instant claims.

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5. Claim 15-17 and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 13 of U.S. Patent No. 6,231,764 in view of Bovington ('064).

Claims 15-17 and 19 differ from the patented claims in recitation of the filter and pump being side by side, in vertical housings connected by a tube. It is known to provide a septic tank filter with such a configuration, as exemplified by the '064 Bovington patent. It would therefore have been obvious for one of ordinary skill in the art to provide a filter in such a configuration in the septic tank of the '764 patent, depending on the configuration of the tank.

6. Claim 18 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 13 of U.S. Patent No. 6,231,764 in view of Bovington ('064 and '664).

Claim 18 differs from claim 16 in recitation of the tube being above the screen. It is known to connect a screen to a pump in a septic tank above the screen, as exemplified by the '664 Bovington patent. It would therefore have been obvious for one of ordinary skill in the art to vary the location of the tube of claim 16, again depending on the configuration of the tank.

7. Claims 22, 31 and 33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,508,933. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because the recitation of a septic tank in the instant claims is intended use language failing to limit the structure recited. Note that the patent discloses that the pump may be the source of water to the spray arm (column 4, lines 39-41).

8. Claims 1-3, 22-24 and 31-33 are rejected under 35 U.S.C. 102(e) as being anticipated by U. S. Patent No. 6,231,764.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131, or by a showing of common ownership at the time the invention was made under 35 U.S.C. 103(c).

9. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being obvious over U. S. Patent No. 6,231,764 in view of Bovington (064 and '664).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed

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in the reference was derived from the inventor of this application and is thus not the invention "by another," or by a showing of a date of invention for the instant application of any unclaimed subject matter prior to the effective U.S. filing date of the reference under 37 CFR 1.131, or by a showing of common ownership at the time the invention was made under 35 U.S.C 103(c).

This rejection is made for the reasons in paragraphs 5 and 6, above.

10. Claims 22, 31 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by U. S. Patent No. 6,508,933.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131, or by a showing of common ownership at the time the invention was made under 35 U.S.C 103(c).

11. Claims 1-3, 15-19, 22-24 and 31-33 are directed to an invention not patentably distinct from claims 1 and 13 of commonly assigned U. S. Patent No. 6,231,933. Specifically, the patented claims recite a septic tank having a pump

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directing water to a moveable nozzle for cleaning a screen, as recited in the instant claims. With respect to claims 15-19, see paragraphs 5 and 6, above.

12. Claims 22, 31 and 33 are directed to an invention not patentably distinct from claims 1-3 of commonly assigned U. S. Patent No. 6,508,933. Specifically, the recitation of a septic tank is intended use language failing to limit the structure claimed.

13. Commonly assigned U. S. Patents 6,231,933 and 6,508,933, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee is required under 37 CFR 1.78(c) and 35 U.S.C. 132 to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. Failure to comply with this requirement will result in a holding of abandonment of the application.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g).

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14. Claims 22, 31 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Newton.

Newton discloses a strainer with a pump directing part of the strained liquid to a nozzle for cleaning the screen, as claimed. It is submitted that the recitation of a septic tank and drain field is intended use language failing to limit the structure claimed.

15. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newton in view of Kopp et al.

Claims 23 and 24 differ from Newton in recitation of a pump vault. It is known to use a submersible pump in a water intake, thus creating a pump vault, as exemplified by Kopp (see figure 2). It would therefore have been obvious for one of ordinary skill in the art to use a submersible pump in the system of Newton, to provide a complete, self-contained unit.

16. Claims 4-7, 25 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The recitation of a pump in a vault with a strainer with a relatively moveable nozzle connected to the pump for directing some of the effluent to the strainer for cleaning the strainer, wherein the vault has a closed bottom wall, a cylindrical side

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wall with holes, and the strainer is disposed in the vault below the holes patentably distinguishes over the prior art of record.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Other references of interest include Zoeller, Mayer, Wilkins, Ball, Stoneburner, Stuth, Bovington ('847) and Stegall.

18. Any inquiry concerning this communication should be directed to Christopher Upton at telephone number (703) 308-3741.

A handwritten signature in black ink, appearing to be 'CU' or 'C.U.' with a stylized flourish at the end.

**CHRISTOPHER UPTON
PRIMARY EXAMINER**